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RUEHBJ/AMEMBASSY BEIJING PRIORITY 1355
RUEHKO/AMEMBASSY TOKYO PRIORITY 1222
RUEHIT/AMCONSUL ISTANBUL PRIORITY 1791
RUEHVEN/USMISSION USOSCE PRIORITY 2342
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RUEAIIA/CIA WASHDC PRIORITY
RHEFDIA/DIA WASHDC PRIORITY
RUEKJCS/JOINT STAFF WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUEKJCS/SECDEF WASHDC PRIORITY
RUCPDOG/DEPT OF COMMERCE WASHDC PRIORITY
RHEBAAA/DEPT OF ENERGY WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

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STATE FOR SCA/CEN, EEB
PLEASE PASS TO USTDA DAN STEIN
TREASURY FOR BAKER/LANIER
ENERGY FOR EKIMOFF/THOMPSON

E.O. 12958: N/A

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SUBJECT: TURKMENISTAN: PRESIDENT SIGNS NEW LAW ON FOREIGN
INVESTMENT

11. (U) Sensitive but unclassified. Not for public Internet.

12. (SBU) SUMMARY: Turkmenistan's President Gurbanguly Berdimuhamedov on March 17 unveiled a new government program to promote domestic entrepreneurial development and foreign investment, including substantial changes to Turkmenistan's tax code and a new law on foreign investment. While all documents will require substantial further analysis, the new law on foreign investment, which includes substantially broadened protections for foreign investors (including a simplified visa regime), seems to represent a genuine effort by the government to improve the foreign investment climate, although we believe it was drafted with relatively little foreign consultation and input. END SUMMARY.

13. (U) During a cabinet meeting on the fringes of an entrepreneurial exhibit, Turkmenistan's President Gurbanguly Berdimuhamedov on March 17 announced that his government is embarking on a program to promote development of small and medium enterprises in Turkmenistan and improve the foreign investment climate. The president announced he is requiring the Justice Ministry and other relevant government agencies to develop a new plan for promoting private business within 30 days (septel). On the same day, he signed a law making major revisions to Turkmenistan's tax code (septel) and a totally new law on foreign investment.

NEW LAW ON FOREIGN INVESTMENT LONGER THAN PREVIOUS LAW

14. (U) The new law on foreign investment replaces an old law foreign investment law dating back to 1992. Its six chapters and 30 articles greatly expand the previous law. New additions in the definition of foreign investments include new references to (and protection for) intellectual property rights and rights for the results of intellectual activities,

and also for services and information. As in the previous law, foreign investors can include international organizations and foreign governments, as well as foreign juridical entities and foreign physical entities that are permanent residents in foreign countries at the time of investment. The new law also states that any international agreements to which Turkmenistan is a party supercede the foreign investment law.

NEW "COMPETENT BODIES" FOR NON-HYDROCARBON SECTORS

15. (U) The new law gives the Council of Ministers responsibility for development and realization of government policies for attracting foreign investment and for coordinating foreign investment activities on Turkmenistan's soil. Drawing on the example provided by the State Agency for Management and Use of Hydrocarbon Resources, however, the law also creates a series of representative organs that will function as "competent bodies" for the day-to-day management of foreign investment. These bodies will be tasked with developing measures to promote foreign investment, coordinating activities in the foreign investment sector (including formulating effective mechanisms for partnerships between the government and businesses), and assisting foreign investors with the process of meeting relevant officials, registering their investments, providing marketing information and consulting services. These bodies will also monitor investment monies from international financial institutions and donor countries, study international capital markets and make suggestions to the Cabinet of Ministers for improving the investment climate. All investment projects with foreign investment must be registered and approved by a body of experts.

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NEW, BROADER PROTECTIONS FOR INVESTORS

16. (U) In laying out the legal regime for foreign investment activities, the new law states that such activities may be limited only to the degree to which such limitations are required to protect the basis of Turkmenistan's constitution and security. If there are changes in Turkmenistan's legislation that lead to new prohibitions or restrictions, the laws in effect at the time the investment was registered will continue to be applied for ten years.

17. (U) The new law gives enterprises with foreign investments and branch offices of foreign juridical entities the right to export their products and to import products for their own use. Foreign investors are given special incentives in free economic zones, including the right to rent land under special terms, and fee-free services for themselves, their contractors and sub-contractors. Enterprises with foreign investment are given the right to set the conditions for selling all products where prices are not state-regulated. The law also authorizes, in the interests of improving Turkmenistan's social-economic development, any other benefits needed to attract foreign investment.

18. (U) One of the areas of broadest difference between the new and old foreign investment laws is the substantially broader legal protections given to foreign investors under the new law. New guarantees include the free use of wages and profit on the territory of Turkmenistan, including for re-investment, unblocked repatriation of wages, profit, and other legally received moneys in foreign currencies, the right to pass on contractual rights and financial obligations to other parties, a simplified visa regime (investors, their representatives and families working in Turkmenistan are guaranteed multi-entry visas for terms not less than one year), access to information, repayment for termination of investment activities and compensation for forced confiscation of property.

¶9. (U) The law states that trade disputes will be resolved through negotiation, in a Turkmen court of arbitration, or -- with the agreement of both sides -- in a third-party court.

¶10. (SBU) COMMENT: The government has enacted this new law in response to growing pressure from foreign governments and businessmen to improve Turkmenistan's foreign investment climate. At first glance, there seem to be a number of improvements, especially the guarantee of an eased visa regime, that represent a real effort to respond to the points of greatest contention. However, post will follow up in the coming days with experts from international financial institutes and foreign businessmen to see how they view this new law. EBRD and World Bank, for example, tell us they had very little input during the drafting. END COMMENT.
HOAGLAND